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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

September 7, 2022

The Honorable Joseph R. Biden, Jr.
President
United States of America
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20515

Dear President Biden:

We write today to request your administration expand the tribal co-management of federal lands, waters, and resources.¹ Such an expansion is a necessary step towards redressing the significant injustices perpetrated against the Indigenous Peoples of the United States by colonial powers and the U.S. Federal Government. Moreover, this expansion is in line with your administration's priorities of addressing historic and environmental injustices, advancing equity and opportunity for Indigenous communities, and respecting the nation-to-nation commitment of the federal trust relationship. Broader and more diverse opportunities for tribal co-management means better parks, more resilient forests, more holistic decision-making, less litigation, and more durable answers to the questions our federal property managers face daily. Considering the longstanding and deep connections between tribal nations and many of our nation's public lands and waters, all Americans would benefit from greater tribal knowledge and guidance in the management and oversight of these resources.

Since time immemorial, Indigenous communities have managed the lands and waters that now comprise the United States. As the original stewards of these resources, Indigenous peoples developed a deep knowledge of and connection to these resources that persists even after centuries of colonization, forced relocation, and violence. Indigenous communities in the United States maintain cultural, historical, and religious connections to their ancestral homelands that were developed in many cases over thousands of years. These lands and waters remain essential to Indigenous lifeways, and many tribal governments exert rights over off-reservation lands – including federal lands – to hunt, fish, and gather. In turn, numerous tribal governments seek expanded opportunities to engage with the federal government to manage tribal and federal lands and waters through requests for consultation and efforts to co-manage resources on distinct parcels of federal land. Better honoring these requests not only helps address our country's negative history in terms of Indigenous rights, it also presents a valuable opportunity to invest in the rich culture and history that people native to this land offer, which, in turn, helps all Americans.

¹ For the purposes of this letter, tribal co-management refers to fulfilling obligations to Indian Tribes in a manner that ensures that Tribal governments play an integral role in decision making related to the management of Federal lands and waters through consultation, capacity building, and other means consistent with applicable authority, as laid out in section 3 (Principles of Implementation) of the Joint Secretarial Order (3403).

Tribal co-management can take many forms, but in its most basic sense, it requires the coordination of management practices between the federal government and tribal governments. Co-management also implies the incorporation and utilization of Indigenous knowledge in federal management and decision-making. We applaud your commitment to recognize and address the disproportionate burdens placed on Indigenous communities by historic injustices and your efforts to amplify Indigenous voices (particularly through the re-establishment of the Tribal Nations Summit)² – expanding tribal co-management is an essential step to further advance these efforts.

On March 8, 2022, the House Natural Resources Committee held an oversight hearing “*Examining the History of Federal Lands and the Development of Tribal Co-Management.*” At this hearing, the Committee heard from Tribal Leaders, administration officials, historians, legal scholars, and land and resource managers about state of tribal co-management of federal lands, waters, and resources. These experts spoke to the importance of reintegrating tribal governments and Indigenous knowledge in the management of Indigenous ancestral lands and resources; they noted that this reintegration is not only morally imperative, but it could also help federal land managers make meaningful progress towards climate and ecosystem protection goals. This support for expanded tribal co-management extended to witnesses invited by both Republican and Democratic members and was echoed by members across the political spectrum.

Witnesses before the Committee highlighted specific examples of successful tribal co-management relationships on the ground, as well as noting areas where existing authorities allow for a significant expansion of co-management opportunities. The Committee heard from the Bears Ears Inter-Tribal Coalition regarding their stewardship of the Bears Ears National Monument, which you re-designated following the former President’s illegal reduction.³ The Committee also heard from the Columbia River Inter-Tribal Fish Coalition and the Inter-Tribal Timber Coalition about successful co-management relationships their organizations support on behalf of tribal governments protecting forests, fisheries, and watersheds. National Park Service Director Charles F. Sams III spoke to successful tribal co-management relationships at Grand Portage National Monument and Redwood National Park and identified steps his agency is already taking to consider expanded co-management relationships. All the witnesses spoke compellingly on the benefits these relationships provide to federal lands and waters, tribal communities, and the entire nation.

During the hearing, witnesses provided the Committee with specific recommendations for expanding tribal co-management under existing law. They also highlighted additional actions that might be taken to further enhance tribal co-management relationships on the ground. Below is a list of requests for administration actions (within the jurisdiction of the House Natural Resources Committee) based on the expert testimony, as well as a list of requested actions and information that could help co-management practitioners and Congress better support the expansion of these relationships across federal lands and waters.

- **Utilize existing authorities to expand tribal co-management of federal lands and waters:**
 - The Executive Branch has considerable authority to advance co-stewardship of federal lands and waters with Indian Tribes. Congress granted all federal agencies, including the

² Domestic Policy Council. (2021, November 15). *The White House Tribal Nations Summit Progress Report*. White House. Retrieved from <https://www.whitehouse.gov/wp-content/uploads/2021/11/WH-Tribal-Nations-Summit-Progress-Report.pdf>

³ *Who We Are*. Bears Ears Inter-Tribal Coalition. (2022, January 11). Retrieved from <https://www.bearssearscoalition.org/about-the-coalition/>

Proclamation on Bears Ears National Monument. The White House. (2021, October 8). Retrieved from <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/08/a-proclamation-on-bears-ears-national-monument/>

Department of the Interior (DOI) and the Department of Health and Human Services (HHS), broad authority to enter into agreements with tribal governments under The Indian Self-Determination and Education Assistance Act (ISDEAA 25 U.S.C. §5301 *et seq.* Congress intended ISDEAA to function as a means of expanding tribal government capacities and to train tribal officials to meet the needs of their communities.⁴ Expanding opportunities, as enabled under existing legislation, will further and better meet the long-standing priorities of ISDEAA and the Indian Self-Determination Act. The Department of Agriculture (USDA) also has various authorities that allow the Forest Service to enter into tribal co-management of its resources.

- Specific bureaus within DOI, USDA, as well as the Department of Commerce have authorities to support agreements and partnerships with tribal governments, including:
 - Bureau of Land Management (BLM): Under 43 U.S.C. § 1737 *et seq.* (Federal Land Policy and Management Act), BLM is authorized to enter into cooperative agreements for the management, protection, and sale of public lands. BLM may also conduct investigations, studies, and experiments regarding the management, protection, and sale of public lands in cooperation with others, and accept contributions or donations of money, services, and property for the management, protection, development, acquisition, and conveying of public lands.
 - National Parks Service (NPS): Under 54 U.S.C. § 101702(d), the Secretary of the Interior is authorized to enter into cooperative agreements with tribal governments to protect natural resources units of the NPS system through collaborative efforts both inside and outside the units.
 - U.S. Fish and Wildlife Service (FWS): Under 16 U.S.C. § 661 (Fish and Wildlife Coordination Act), FWS is authorized to enter into agreements to assist in the protection of fish and wildlife and their habitats.
 - Bureau of Ocean Energy Management (BOEM): Under 43 U.S.C. § 1346, BOEM may enter into agreements to carry out environmental studies on the impacts of outer continental shelf development, and to obtain information for such studies from any person.
 - Bureau of Reclamation (BOR): Under 43 U.S.C. § 373d, BOR may enter into grants and cooperative agreements with tribes to promote the development, management, and protection of their water resources.
 - U.S. Forest Service (USFS): USFS has numerous authorities under which co-management might be conducted. Under PL 108-278 (Tribal Forest Protection Act of 2004), the Forest Service (and BLM as well) is empowered to contract with tribes to meet federal forest protection goals, including a reduction in wildfire risk and land restoration, including under ISDEAA contracts.⁵ The 2018 Farm Bill, 132 Stat. 4877, expanded the Good Neighbor Authority to allow tribal governments to enter into forestry management agreements with states and USFS. USFS is further authorized to work with tribal governments to support collaborative forest management projects under the Collaborative Forest Landscape Restoration Program (P.L. 111-11). Pursuant to 25 U.S.C. § § 3051-3057 (Food, Conservation, and Energy Act of 2008), the Cultural and Heritage Cooperation Authority

⁴ See 25 U.S.C. § 5301; *see also* Washburn, Kevin K. (October 27, 2021). *Facilitating Tribal Co-Management of Federal Public Lands* (pp. 6). U Iowa Legal Studies Research Paper No. 2021-45.

⁵ Agriculture Improvement Act of 2018, Pub. L. 115-334, 132 Stat. 4877 (2018).

provides additional legal authorities to improve relations between the USFS and Indian tribes, including provisions to protect and preserve the traditional, cultural, and ceremonial rites and practices

- National Oceanic and Atmospheric Administration (NOAA): Section 301 of the National Marine Sanctuaries Act (16 U.S.C. § 1431) authorizes NOAA to develop and coordinate plans with Tribes to ensure the continuing health and resilience of marine areas by establishing sanctuaries with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational or aesthetic qualities. The Coastal Zone Management Act (16 U.S.C. chap. 33) directs NOAA to cooperate and assist Federal, local, and state governments, and any vitally affected interest (i.e., Tribes) to achieve effective protection of the land and water resources of the coastal zone, including the protection of natural resources and the sensitive preservation and restoration of historic, cultural, and esthetic coastal features, Under the Coral Reef Conservation Act, 16 U.S.C. § § 16401-09, NOAA must assist in the preservation of coral reefs by supporting conservation programs, including projects that involve affected local communities.

- **Promote the use of co-management agreements and/or provisions in land management plans consistent with DOI's and USDA's obligations under existing law; and use substantive and enforceable plan provisions to protect tribal treaty rights, cultural resources and subsistence uses on federal public lands.**

- Beyond specific authorities for entering into agreements or improving relations, planning is a foundational aspect of federal public lands, waters, and resources management through which tribal partnerships and co-management agreements may be constructed. Every plan revision should be used as an opportunity to work collaboratively with tribes, provide substantive protections to tribal treaty rights, cultural resources, and subsistence uses on public lands and waters.
- Resource Management Plans prepared by the BLM (43 U.S.C. § 1600), Comprehensive Conservation Plans prepared by the FWS (16 U.S.C. § 668dd), General Management and associated Plans prepared by the NPS (54 U.S.C. § 100502), and Land and Resource Management Plans prepared by the USFS (16 U.S.C. § 1604) require government-to-government consultation as well as timely and meaningful pre-decisional tribal engagement. Substantive and enforceable protections for tribal treaty rights and cultural resources can be included in land use plans, such as the designation and prioritization of areas of critical environmental concern on BLM lands (areas “where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values,” 43 U.S.C. § 1702) and the application of plan components to “areas of tribal importance” on NFS lands (36 C.F.R. § 219.10). In addition, through meaningful and effective tribal engagement, land use plans can also provide the foundation for continuing federal-tribal partnerships in the shared stewardship and implementation of those plans.
- The National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) are also integral to the planning, management, and administration of federal public lands and resources. NEPA intends to “preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and a variety of individual choice” (42 U.S.C. § 4331(b)(4)); the

NHPA authorizes the identification and protection of historic properties, including traditional cultural properties. Further, NHPA section 106 mandates tribal consultation to identify historic and cultural properties potentially affected by federal undertakings and to “seek ways to avoid, minimize or mitigate any adverse effects” on such properties (*see also* 54 U.S.C. chap. 3027 and 36 C.F.R. §800.1). The Council on Environmental Quality and the Advisory Council on Historic Preservation provides additional guidance on how best to integrate section 106 and NEPA planning, including the use of section 106 to inform the development and selection of alternatives in NEPA documents (Council on Environmental Quality, Executive Office of The President and Advisory Council on Historic Preservation, NEPA And NHPA: A Handbook for Integrating NEPA and Section 106, 5 (Mar. 2013)).

- **Ensure thorough execution of all relevant guidance and directives, including those formulated during the Tribal Nations Summit:**
 - Your administration has taken numerous steps to support Indigenous communities, including through commitments made during the Tribal Nations Summit. Moreover, over the last three decades, federal administrations have continuously reaffirmed the United States’ trust responsibility to tribes, laid out principles and guidance for government-to-government relations with tribal nations, incorporated Indigenous knowledge into federal decision making, and collaborated in co-stewardship of federal lands and waters with tribes in a series of executive orders, secretarial orders, and memoranda. We urge the Departments of Agriculture and the Interior to prioritize the implementation of these directives, and to ensure that relevant guidance documents and manuals are provided in a timely and user-friendly fashion.

- **Incentivize agencies to expand co-management opportunities and to engage in co-management with tribal governments:**
 - DOI is already required to publish an annual list of programs eligible for Self-Determination contracts. While this list has changed some over time, it has rarely included many significant opportunities for co-management. For example, in the Fiscal Year 2021, DOI entered into only ten self-determination contracts with tribal governments. DOI, USDA, NOAA, and other applicable agencies should be encouraged or required to expand this annual list of self-determination opportunities and to ensure tribal governments receive clear indications of available opportunities. Significantly increasing the list of self-determination opportunities is an essential first step in broadening tribal co-management of federal lands and waters.
 - While clear departmental and agency support for tribal co-management is essential, these agreements will also rely on field level decisions by relevant managers at each agency. Your administration should provide clear signals to these managers that co-management is a priority by incentivizing tribal co-management agreements, supporting managers who have entered into these agreements, and including relevant criteria in agency performance assessments.

- **Provide funding for tribal co-management and simplify the process for entering into these agreements:**
 - While tribal governments have the interest and knowledge to provide adequate services as co-managers, many lack the resources for sustained engagement alongside federal agencies. Your administration should make dedicated funding available for tribal co-

management activities and capacity building and/or could request such funding from Congress. This funding would support tribal participation in ongoing relationships on the ground – even supporting the development of co-management work at existing sites, such as the Bears Ears National Monument.

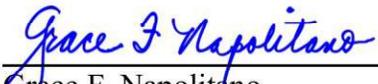
- Federal agencies should work to simplify the process of engaging in tribal co-management, from application to contract completion, to the greatest extent practicable. Making it common practice to begin any project by first finding a tribal partner to address an issue such as dam construction or maintenance, wildfire protection, soil conservation, historic preservation, park maintenance, etc. will enhance federal programs and the well-being and expertise of Tribal nations.
 - Federal agencies should prioritize longer-term relationships with tribes, and work to move from one-year contracts to ongoing agreements. Creating Intergovernmental Personnel Act agreements between agencies and tribes would help ease transitions to tribal management by allowing existing federal employees to work on tribal contracts.
- **Examine barriers to expanded tribal co-management and propose solutions:**
 - DOI Secretarial Order 3342 directed the Department’s Office of the Solicitor to advise departmental agencies on legal issues associated with entering into cooperative agreements and collaborative partnerships with tribes. Your administration should reinstitute and broaden this effort, requiring federal agencies, including land management agencies to examine their authority to engage in co-management, barriers to such engagement, and potential solutions. These recommendations should then be turned into actionable directives or requests to Congress in the form of legislative proposals or funding requests included in the annual President’s Budget.
 - **Support the dissemination of tribal co-management best practices, and convene a forum to discuss these issues:**
 - There are numerous entities, both tribal and federal, who have longstanding experience facilitating tribal co-management, including the co-management of federal lands, waters, and resources. The administration could facilitate – through a forum, convention, or other means – engagement between these experts to begin developing standards and best practices for tribal co-management. Doing so could inform agency guidance documents and memoranda, support tribal capacity building, and help identify barriers to expanding these relationships.
 - **Identify necessary funding and authorities for expanded co-management relationships and relay those needs to Congress.**
 - We stand ready to support the expansion of tribal co-management across federal lands, waters, and resources. Your administration should identify relevant needs, including gaps in legislative authority, gaps in funding, or other barriers that Congress should address to ensure the important goals of tribal co-management are met.

Thank you for your consideration of these essential issues. We stand ready to work with your administration to ensure the goal of meaningful tribal co-management of federal lands, waters, and resources meets the moral and legal obligations owed to tribal governments. If you have any questions, or would like to discuss these matters further, please do not hesitate to contact me or my staff at the House Natural Resources Committee at (202) 225-6065 or at Naomi.Miguel@mail.house.gov and Henry.Wykowski@mail.house.gov.

Sincerely,



Raúl M. Grijalva
Chair
Committee on Natural Resources



Grace F. Napolitano
Member of Congress



Joe Neguse
Member of Congress



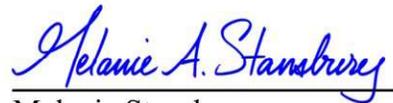
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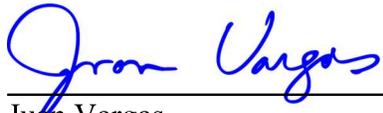
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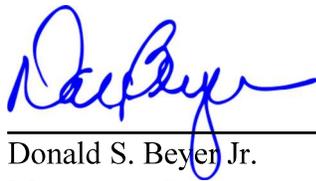
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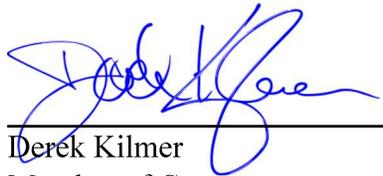
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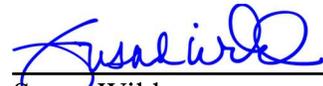
Tom O'Halleran
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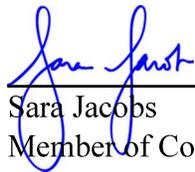
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